

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

C. Holmes, a/k/a Cynthia Holmes, a/k/a)
Cynthia Holmes, M.D., a/k/a Cynthia Collie)
Holmes,)

Plaintiff,)

v.)

Case No. 2:20-cv-01748-RMG

ORDER AND OPINION

Granuaile, LLC; J.P. Walsh, individually)
and as related to Granuaile, LLC; L. Walsh,)
individually and as related to Granuaile,)
LLC.,)

Defendants.)

Before the Court is the Report and Recommendation (R&R) of the Magistrate Judge recommending Plaintiff's case be dismissed as frivolous because it is barred by res judicata. (Dkt. No. 75 at 5). Plaintiff did not file any objections, but separately moved this Court to recuse Magistrate Judge Cherry. (Dkt. No. 77). This Court denied that motion. (Dkt. No. 78). For the reasons set forth below, the Court adopts the R&R as the Order of the Court.

I. Introduction

This action arises from Plaintiff's claims of trespass, nuisance, negligence and unjust enrichment against Defendants. Plaintiff asserted identical causes of action as she previously levied against the same Defendants, which were adjudged on the merits by a district court. (Dkt. No. 75 at 2 (citing *Holmes v. Granuaile, LLC*, No. 2:16-3969-BHH-BM (D.S.C.) ("*Holmes I*")). The Magistrate Judge recommended dismissal of the case on res judicata grounds (Dkt. No. 17),

which the District Judge adopted. (Dkt. No. 29). Plaintiff unsuccessfully appealed the dismissal of her case to the Fourth Circuit and was afforded the opportunity to file an Amended Complaint, (Dkt. Nos. 43, 47), which is presently before this Court. (Dkt. No. 50).

II. Legal Standard

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court is charged with making a *de novo* determination only of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of specific objections, the Court reviews the Report for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’”) (quoting Fed. R. Civ. P. 72 advisory committee's note).

III. Discussion

Upon review of Plaintiff's Amended Complaint, the Magistrate Judge ably determined that Plaintiff's claims are barred by *res judicata*. “To establish *res judicata*, three elements must be shown: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.” *Riedman Corp. v. Greenville Steel Structures, Inc.*, 419 S.E.2d 217, 218 (S.C. 1992). This Court finds no clear error with the R&R's establishment of these three factors,

and adopts the R&R's conclusion that Plaintiff's claims are barred by res judicata and subject to summary dismissal on this basis. (Dkt. No. 75 at 9).

To the extent Plaintiff's motion for recusal could be liberally construed as an objection to the R&R, Plaintiff objects not to the finding that res judicata bars her claims, but to the fact that the Magistrate Judge – rather than defense counsel – invoked the doctrine. (Dkt. No. 77). Because the ability of a court to dismiss a case on res judicata principles *sua sponte* is well-supported by case law in this Circuit, Plaintiff's objection is overruled. (Dkt. No. 75 at 6, 9-10) (collecting cases); *see, e.g., Brown v. South Carolina*, No. 3:13– 2983–MBS-PJG, 2014 WL 4826152, *2 (D.S.C. Sept. 24, 2014), *aff'd*, 589 F. App'x 190 (4th Cir. 2015); *aul v. de Holczer*, No. 3:15– 2178–CMC-PJG, 2015 WL 4545974, *6 (D.S.C. July 28, 2015), *aff'd*, 631 F. App'x 197 (4th Cir. Feb. 4, 2016); *Cottle v. Bell*, No. 00–6367, 2000 WL 1144623, *1 (4th Cir. Aug.14, 2000).

IV. Conclusion

In light of the foregoing, the Court **ADOPTS** the R&R (Dkt. No. 75) as the Order of the Court and **DISMISSES** Plaintiff's Amended Complaint (Dkt. No. 50) without issuance and service of process and without leave to amend.

AND IT IS SO ORDERED.

s/ Richard M. Gergel
Richard Mark Gergel
United States District Judge

August 8, 2024
Charleston, South Carolina